Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1169 of 2002 (S/B)

Lal Singh and others ……
Petitioner

Versus

District Magistrate,
Nainital ……
Respondents

Mr. S.N. Babulkar, learned Senior Counsel assisted by
Mr. T.S. Rautela, learned counsel for the petitioners.
Mr. N.C. Gupta, learned Standing Counsel for the State.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have sought mandamus directing the respondent to allot the petitioners Government quarters, Type-II, to which they are entitled.

2) Brief facts to the case as narrated in the writ petition are that the petitioners are Drivers in various Government departments of District Nainital. It is alleged in the writ petition that they are category 'C' officials as per the Government Order dated 14.06.1984 (copy Annexure- 1 to the writ petition). There is a pooled housing colony at 'Pines' in Nainital under the supervision and control of the respondent, who is the allotting authority of the quarters situated there. The respondent had allotted the petitioner's quarters of the category Type- I, which are meant for the Group 'D' employees. It is further alleged in the writ petition that even after several representations they are not being allotted Type- II quarters though they are working in

the pay scale of Rs. 3050-3275 per month. It is further alleged that in some of the Type-II quarters namely B- 3, D- 3 and D-4 the allottees have sublet the quarters. In view of the fact, the unauthorized occupants should be evicted and the quarters be allotted to the petitioners.

3) A counter affidavit has been filed on behalf of the District Magistrate, Nainital in which it has been admitted that the petitioners are Drivers in various Government departments. This fact is also not been denied that they belong to Group 'C' category. It is also not disputed that there is a Government colony at 'Pines' in Nainital. However, it is stated in the counter affidavit that the number of Government employees is too high as compared to the quarters available for them. It is further stated that though Group 'C' employees are entitled to Type-II quarters but in view of shortage of accommodations, petitioners on their own request have opted for Type- I quarters which are allotted to them as at present no Type-II quarters are available for allotment. In para 10 of the counter affidavit, it has been stated that apart from the pay scale there are several other factors which are required to be considered for the allotment of the Government quarters. As to the allegation that some allottees in unauthorized manner have sublet the accommodation available to them, the fact has been denied except that the allotments of quarter No. B-3 and C- 3 are liable to be cancelled. In respect of Type- II Quarter No. C- 2, in para 11 of the counter affidavit it has been stated that the allottee of that quarter is transferred to Dehradun and his wife, a teacher in Government Primary School at Nainital is residing there along with her family though she is not herself

the allottee but her husband, who is also a Government servant is the allottee.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with copies of annexures annexed thereto.

5) The short question for consideration before this Court is whether the petitioners are wrongly denied the allotment in Type- II quarters to which they are entitled?

6) Admittedly, the petitioners are Drivers and come within the category of Group 'C' employees. It is also not disputed that they are entitled to Type- II quarters. However, the dispute relates as to the availability of the Type- II quarters for the petitioners. Learned Standing Counsel submitted that, as stated in the counter affidavit there is scarcity and shortage of Government accommodation as compared to the number of employees working in Nainital. It is further submitted on behalf of the respondent that the petitioners themselves have opted for Type- I quarters in view of the shortage of Type- II quarters. Mr. S.N. Babulkar, learned senior counsel on behalf of the petitioners has admitted this fact that petitioners are living in Type- I quarters. It can very well be believed that the petitioners were not forced to go in the Type- I quarters but they must have opted in view of the shortage of higher category of quarters. Learned senior counsel for the petitioners submitted that there are certain quarters in which the respondent may take proceedings under U.P. Public Premises (Eviction of Unauthorized Occupants) Act and get the quarters allotted to the petitioners. As such it can very well be said that the stand taken by the respondent is correct

to the extent that at this stage, no vacant accommodation is available in Type- II quarters to accommodate the petitioners.

7) One more point which needs to be considered at this stage is that there are Government Orders relating to allotment of quarters and the allotting authority is supposed to issue allotment orders according to the Government Orders. It is not a case of the petitioners that there are no other Drivers in District Nainital working in other Government departments nor is it their case that there is no Clerical staff in the various Government departments. Without considering the claim of other employees having higher pay scale and that of the Drivers of the departments it will be unjust and improper to issue a mandamus to allot Type- II quarters to the petitioners ignoring the claims of other employees, particularly, when there is no report of the vacant quarters at this stage.

8) In the circumstances, this writ petition deserves and is disposed of with the observation that steps shall be taken for eviction of unauthorized occupants, if any occupying the Type- II Government quarters and when the same fell vacant, the respondent shall made the allotment orders considering also the claim of the petitioners along with that of other employees of Group 'C' category as per the Government Orders. There is no order as to costs.

(P.C. Pant, J.)

Dt. 20th Sep. 2004.
H.Negi